(29)

AFR-HC—78

20/11/07

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr. A. No. 818/2005 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

SB: HON'BLE SHRI DHIRENDRA MISHRA, J.

APPELLANTS (IN JAIL) Jamaluddin, S/o Rajjak Musalman, aged about 22 years, R/o. Near Sharma Floor Mill, Shardapara, Camp-2, Chhawani, P.S. Chhawani, District Durg, (CG)

VERSUS

RESPONDENT State of Chhattisgarh, through T.I., P.S. Chhawani, District Durg (CG)

16-11-2007

Shri Rajesh Jain, Advocate, for the appellant.
Shri Neeraj Mehta, Panel Lawyer for the State.

2. This criminal appeal is directed against the judgment of conviction and order of sentence dated 21st October, 2005 passed in S.T. No. 158/2004 whereby learned 4th Additional Sessions Judge, Durg has convicted the appellant under Sections 376, 450 and 506 Part II of I.P.C. and sentenced him to undergo R.I. for 10 years with fine of Rs. 1000/- in default of payment of fine, to undergo R.I. for one month, to undergo R.I. 5 years with fine of Rs. 2000/- and in default of payment of fine, to undergo R.I. for two months and to undergo R.I. for 1 year with fine of Rs. 2000/-, in default of payment, to undergo R.I. for two months respectively.

3. The case of the prosecution in brief is that on the date of incident at about 8.30 p.m., the prosecutrix aged about 26 years was sleeping in her room, at that time accused came to her room and sat on her cot and threatened her that if she shouts, he will assault her with knife and thereafter inserted cloth in her mouth, he committed

आदेश पत्रक

Cr. A. No. 818/2005

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

forcible sexual intercourse with her. After committing rape, he also inserted knife in her vagina. On her husband's return from his duty at 10.00 p.m., the prosecutrix complained that she is suffering from stomach ache and bleeding. Her husband called Janki, who took the prosecutrix to Bhilai Hospital with the help of villagers. The prosecutrix did not disclose about the incident to anyone. She narrated about the incident to her husband on the next day who informed the police and thereafter Dehati Nalishi of Ex. P-10 was recorded in the Hospital on 12-3-2004. During investigation, treatment papers of the prosecutrix were taken into possession from Bhilai Hospital vide Ex. P-22. She was also sent for medical examination where Dr. Kalpana Sharma examined her and gave report of Ex. P-23. Vaginal slides, petticoat of the prosecutrix and finger nails and full pant of the accused, seized during investigation, were sent for chemical examination to FSL, Raipur and report of the FSL, Raipur is Ex. P-20. After completing investigation, charge sheet was filed.

4. During trial, the ~~prosecutrix~~ prosecution examined 13 witnesses in all and thereafter statement of the accused was recorded in which he denied the evidence appearing against him in the prosecution case and pleaded innocence and false implication. However, the trial Court after hearing the counsel for the respective parties, has convicted and sentenced the appellant as mentioned in paragraph 1 of the judgment.

(31)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

Cr. A. No. 818/2005

मामला क्रमांक ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

5. Learned counsel for the appellant submits that the incident allegedly occurred on 11-3-2004 at about 8.30 to 9.00 p.m. Her husband returned to his home at 10.00 p.m. however the prosecutrix did not disclose about the incident to her husband and instead she only informed that she has suffered stomach ache and she is bleeding whereupon the prosecutrix was admitted in the private hospital. Even in the private hospital, the prosecutrix did not disclose about the incident and allegation of rape and assault by the appellant was disclosed by her for the first time on the next day to her husband, on the basis of which, it is the case of the prosecution, her husband informed the police regarding commission of offence, however the nature of information given by the husband has also not been produced during trial. He further argued that the statement of the prosecutrix does not inspire confidence as she has alleged that the accused put knife in her vagina after commission of rape, however in the Dehati Nalishi of Ex. P-10, she has stated that she had put hand in her vagina in which he was keeping knife and she told the doctor at the time of examination that she sustained injury because of insertion of rod. Even the child in whose presence offence was committed has not been examined.

6. On the other hand learned counsel for the State argued that the prosecutrix has categorically stated the manner in which the offence was committed by the appellant and after commission of offence, the knife was inserted in her vagina and her testimony is

GLPRJ—FS/78 — 9/2000 —50,000.

(32)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A - No-818/2005 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

duly corroborated from the evidence of Dr. Madhumita Jain who has deposed that the prosecutrix had sustained injuries over her vagina.

7. I have heard learned counsel for the parties. I have also perused the record as also the impugned judgment.

8. Conviction of the appellant is based on the statement of the prosecutrix (P.W. 5), her husband Bharatlal (P.W. 3) and Dr. (Smt.) Madhumita Jain who has examined the prosecutrix after the incident.

9. It is true that the prosecutrix did not disclose about the incident to her husband on his return to home and even she did not disclose to the doctors who examined her on 11-3-2004 at the time of treatment and disclosed about commission of offence only on the next day to her husband who intimated the police on 12-3-2004, thereafter Dehati Nalishi of Ex. P-10 was recorded in the hospital, however taking into consideration the manner in which the offence was committed by the appellant and the way the prosecutrix was injured after commission of rape, the explanation given by the prosecutrix that she was under shock and therefore, she did not disclose about the incident to anyone including her husband appears to be just and convincing. The prosecutrix has categorically stated that the accused came to her room, he was having knife in his hand and he threatened not to shout and thereafter undressed and committed rape with her after putting cloth in her mouth. The

GRPRJ—FS/78 — 9/2000 —50,000.

XI-H-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक G.A. NO. 818/2005 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

argument that in Dehati Nalishi, it is mentioned that the accused put his hand in which he was carrying knife in her vagina whereas before the Court she stated that he put knife in her vagina is not of much importance which may impeach the credibility of the prosecutrix particularly in the light of the fact that her version is duly corroborated from medical evidence as she has sustained injuries over her vagina and the doctor had repaired her vagina at the time of treatment and she remained in hospital for a considerable period. From the defence taken by the appellant by way of cross-examination, it appears that they had cordial relations and the appellant was frequent visitor to the house of the prosecutrix, the prosecutrix has been subjected to lengthy cross-examination and she has stuck to her claim that the appellant after committing rape had assaulted her over her vagina by knife. Her husband Bharatlal (P.W. 3) has also stated that when he returned at about 10.00 p.m. on the date of incident, he saw that his wife was lying on the floor and blood was oozing and she was complaining stomach ache, thereafter he called Rambai Sahu and Tomarlal Sahu who took her to Bhilai Hospital and admitted there and on the second day at about 5.00 p.m. her wife narrated about the incident and thereafter he informed the police and investigation commenced. The argument that nature of information given by the husband of prosecutrix has not been produced and proved during trial is a latch of investigation however, the same is not of such a grave nature that belies the entire prosecution story. The Investigating Officer D.P. Mishra (P.W. 9) in

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

Cr. A. No. 818/2005

मामला क्रमांक ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	para 6 of the cross-examination has mentioned that after receiving information from her husband he proceeded for hospital after entering his *Ravanagi* in the daily diary and thereafter Dehati Nalishi of Ex. P-10 was recorded. Minor latches of investigation or discrepancies in the statement of the prosecutrix will not render the version of the prosecutrix unreliable or untrustworthy on the basis of which total case of the prosecution could be discarded. 10. It was lastly argued by the learned counsel for the appellant that the appellant is aged about 22 years old boy and, therefore, sentence of R.I. of 10 years is too excessive and the same may be suitably reduced. 11. However, considering the manner in which the offence has been committed by the appellant, I am of the opinion that the sentence imposed by the appellant is just and proper. 12. In the result, the appeal preferred by the appellant being without substance is dismissed. **Sd/-** **Dhirendra Mishra** **Judge**	

PI –

30/1/07 20/9/07